

Amendment No. 1 to HB2256

Lamberth
Signature of Sponsor

AMEND Senate Bill No. 1993*

House Bill No. 2256

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-13-609, is amended by deleting the section in its entirety and substituting instead the following:

(a) This section shall be known and may be cited as the "Freedom from Unwarranted Surveillance Act".

(b) As used in this section:

(1) "Drone" means a powered, aerial vehicle that:

(A) Does not carry a human operator and is operated without the possibility of direct human intervention from within or on the aircraft;

(B) Uses aerodynamic forces to provide vehicle lift;

(C) Can fly autonomously or be piloted remotely; and

(D) Can be expendable or recoverable; and

(2) "Law enforcement agency" means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

(c) The use of a drone, or other substantially similar device, by a law enforcement agency to search for and collect evidence or obtain information or other data shall constitute a search unless authorized by and used in compliance with this subsection (c) or subsection (d). A drone may be used for such purposes:

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(1) If used in compliance and consistent with applicable federal aviation administration rules, exemptions, or other authorizations; and

(2) If the agency first obtains a search warrant signed by a judge authorizing the use of a drone; or

(3) If a judicially recognized exception to the warrant requirement exists at the time of use.

(d) A drone, or other substantially similar device, may be used for the purposes described in subsection (c) without a search warrant or recognized warrant exception if used:

(1) In compliance and consistent with applicable federal aviation administration rules, exemptions, or other authorizations; and

(2)

(A) To counter a high risk of a terrorist attack by a specific individual or organization if the United States secretary of homeland security determines that credible intelligence indicates that there is such a risk;

(B) To prevent imminent danger to life where there is reasonable suspicion that, under particular circumstances, immediate action is needed;

(C) To provide continuous aerial coverage when law enforcement is searching for a fugitive or escapee or is monitoring a hostage situation;

(D) To provide more expansive aerial coverage when deployed for the purpose of searching for a missing person;

(E) To investigate motor vehicle accidents that occur within the traffic right-of-way or an area open to the public;

(F) Where a criminal offense has occurred on publicly owned property, as defined in § 6-54-127(b), or where the law enforcement agency has reasonable suspicion that a criminal offense has occurred on such property; or

(G) At the scene of a fire investigation.

(e)

(1) Any law enforcement agency that uses a drone, or other substantially similar device, to collect evidence or obtain information or other data shall comply in all respects with the fourth amendment to the Constitution of the United States and Article I, § 7 of the Constitution of Tennessee.

(2) Any evidence, information, or other data collected or obtained by use of a drone shall:

(A) Be deleted within three (3) business days of collection unless it is directly relevant to both the lawful reason the drone was being used and to an ongoing investigation or criminal prosecution. If the evidence, information, or other data collected or obtained is directly relevant to both, it shall be retained and deleted by the collecting law enforcement agency in accordance with the same criteria, policies, and procedures used by the agency for evidence collected by methods other than a drone;

(B) Not be admissible as evidence in a criminal prosecution in any court of law in this state if it was collected or obtained in violation of subsection (c) or (d); and

(C) Not be used as probable cause to obtain a search or arrest warrant or reasonable suspicion to detain a person or vehicle if evidence, information, or other data was collected or obtained that was, at the time of collection, unrelated to and discovered only because of the lawful reason the drone was being used.

(f) Any person aggrieved by the use of a drone in violation of this section may initiate a civil action against a law enforcement agency to obtain all appropriate relief, including injunctive relief, destruction of the evidence, information or other data obtained, damages, and reasonable attorney fees.

SECTION 2. This act shall take effect on July 1, 2018, the public welfare requiring it.